IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 421 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.L.MAHERIA FOOD INSPECTOR

Versus

VALLABHBHAI GODABHAI PATEL

Appearance:

1. Criminal Appeal No. 421 of 1991

MR MG NAGARKAR for Petitioner No. 1

MR SN SHELAT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

Mr.Desai, APPfor Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/06/2003

ORAL JUDGEMENT

The short facts of the case are that a complaint was filed under Prevention of Food Adulteraion Act, 1954 (hereinafter referred to as "the Act") by the appellant before the court of Ld.Metropolitan Magistrate, Ahmedabad which came to be registered as Criminal Case No.555/88 and the said complaint was for adulteration of Ground Nut Oil since it was found that the sample did not meet with the requirement and the Iodine value was above the prescribed limit and did not meet with the temperature test and Halphen test was also positive. The Ld.Magistrate tried the complaint and while delivering the judgment the Ld.Magistrate framed three points for consideration, i.e. (i) whether it is proved that the sanction granted for prosecution is legal and valid, (ii) whether the procedure for taking sample and of sealing was legal and valid and (iii) whether the sample found from the accused is of adulterated quality and whether there is adulteration in the same. So far as point Nos (ii) and (iii)_ are concerned, the Ld.Magistrate found that they are proved. However, on the point No.(i) on legality and validity of sanction the Ld.Magistrate found that no reasons are recorded in the sanction and consequently the point of sanction was against the complainant and ultimately the judgment and order dated 26.2.90 came to be passed by the Ld.Magistrate whereby the accused was acquitted for want of proper sanction. It is under these circumstances, the complainant who is the Food Inspector of the Corporation has approached this court by preferring this appeal against the acquittal under Section 378 of Cr.P.C.

2. On behalf of the appellant, Mr.Nagarkar submitted that no reasons are required to be recorded and as such the reliance placed by the Ld.Magistrate upon the judgment of the Honourable Supreme Court in the case of A.K.Roy & ors vs State of Punjab reported in AIR 1986 SC 2160 is illfounded. Mr.Nagarkar submitted that as such since no reasons were required to be recorded the sanction was legal and valid. He further submitted that as per Section 20 of the Act consent for prosecution is required and not the sanction. He relied upon the judgment of the Division Bench of this court in the matter of Harshavadan Dahyalal Sevak vs Nareshbhai Devandas Vaghvani & Anr reported in 1991(2) GLH 615 to support his contention that no reasons are required to be recorded and the sanction is valid sanction and he therefore submitted that as such the point is covered by the judgment of the Division Bench of this court and the appeal deserves to be allowed.

3. The respondent No.1 is served since the office

endorsement in the computer record is that the "notice served to the respondent No.1". However, nobody has appeared on behalf of the respondent NO.1 who was original accused before the Ld.Magistrate.

4. Since the matter is of 1991 and for the reasons recorded hereinafter, and since the issue is, in my view, covered by the aforesaid judgment of the Division Bench of this court, no useful purpose would be served by issuing notice again or by adjourning the matter and I find it proper to decide the matter on merits without hearing the respondent No.1 since the respondent No.1, though, is already intimated by notice, has chosen not to avail the opportunity of defence in the appeal.

5. The Ld.APP Mr.Desai appearing for the State has supported the stand of the appellant by submitting that the issue of sanction is already settled by the Division Bench of this court in the matter of Harshavadan Sevak (supra).

6. The reasons recorded by the Ld.Magistrate in the judgment, more particularly, on the point No.(i) show that the Ld.Magistrate has mainly relied on the judgment of the Apex Court in case of A.K.Roy (supra) and of the Bombay High Court in the matter of Gahininath Bhimrao Patekar vs State of Maharashtra reported in 1987 (1) Prevention of Food Adulteration Cases page 95. There is no dispute on the point that while passing the order for granting sanction the Dy.Municipal Commissioner who was the person authorised for such purpose has used the words "Scrutinise & Sanction". It is not the case of the accused that the Dy.Municipal Commissioner had no authority to grant sanction nor such contention was raised before the Ld.Magistrate. It was only contended that no reasons were recorded and merely because the words used as "Scrutinise & Sanction" can not be said to be sufficient for maintaining the legality and validity of the sanction.

7. In my view, as such, no detailed discussion is required because in view of the judgment of this court, dated 11/12-7-1991 in Cri.Appeal No.240/90 and other allied matters in case of H.D.Sevak (Supra) since the issue is covered.

While considering the judgment of Apex Court in the case of A.K.Roy (supra) the Division Bench in its para 9 has observed as under:

"The case is required to be dealt with in A.K.Roy's matter was further delegation of power to launch the prosecution pursuant to the Prevention of Food Adulteration Punjab Rules, 1958 and more particularly its Rule 3."

Further at para 10 the Division Bench has observed as under:

"10. However, in our opinion, this being the controversy addressed by the Supreme Court, the observations quoted hereinabove as appearing in para 11 with regard to the written consent and more particularly "record his reasons for the launching of such prosecution" do not form part of the ratio of the judgment. It will be relevant to recapitulate that the contention that the order of written consent is required to be reasoned one was not raised before this court."

Further, at para 24 the Division Bench has observed as under:

"24. In our opinion, while dealing with A.K.Roy's case in the earlier part of this judgment we have at length pointed out as to why the question of consent was not there before the Supreme Court. We reiterate that the question as could be seen on reading the judgment was that of sub-delegation or re-delegation by a delegated authority. Had it been the finding of the Supreme Court that the delegation was correct, obviously there was no need for consent for launching the prosecution. In either way, therefore, the aspect of consent was not at all in consideration, and therefore, in keeping with the aforesaid judgments we come to the conclusion that A.K.Roy's case is not a precedent for the purpose of and the ratio of that judgment, is not in connection with the contents of "consent" required to be given by the concerned authorities under section 20(1) of the said Act. We have further stated that nowhere from the judgment, reading it carefully throughout, do we gather that the parties before the Supreme Court had addressed the court on the point of consent and that it was treated as a matter in controversy requiring answer from the Supreme Court."

At para 48 in case of H.D.Sevak(supra) the Division Bench has observed as under:

> "The act of granting of consent by the concerned authority will be an administrative act and not an act of quasi judicial proceedings.... If there are administrative orders, no reasons are required to be given unless law requires it. It is nobody's case that this is the statutory requirement so far as the consent under section 20(1) of the said Act is concerned. The court is therefore called upon to read into by interpretation. It being an administrative act, in our opinion, the said exercise of reading into the statute and the requirement of recording reasons in writing will fail."

7. In view of the aforesaid observations in the judgment of the Division Bench of this court it is apparent that the learned judge committed error in holding that the reasons were required to be recorded while granting sanction and in holding that the sanction was not legal and valid and consequently there is error in deciding the issue No.(i) on the point of sanction.

8. In view of of the aforesaid discussion since the learned judge has acquitted the accused for want of sanction, the judgment and order are quashed so far as it relates to rendering decision on the point No.(i) and it is held that the sanction granted in the present case was legal and valid. However, so far as question of conviction is concerned, since the matter was not considered by the learned judge it is remanded for such purpose and the learned judge shall consider the question of quantum of conviction after giving opportunity of hearing to the accused.

9. Appeal is allowed to the aforesaid extent with a direction to the learned judge to give opportunity of hearing to the accused on the point of quantum of conviction and shall render decision as early as possible preferably within a period of three months from the date of receipt of writ of this court.

10. Office shall send writ of this court and record and proceedings forthwith.

21.6.03 (JAYANT PATEL,J)